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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,929	03/15/2004	Edward A. Enyedy	LEE 2 00381	9567
27885	7590	03/07/2006	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			LANGDON, EVAN H	
			ART UNIT	PAPER NUMBER
			3654	
DATE MAILED: 03/07/2006				

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/800,929
Filing Date: March 15, 2004
Appellant(s): ENYEDY, EDWARD A.

Robert V. Vickers, Reg. No. 19,504
Erik J. Overberger, Reg. No. 48,556
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 18 January 2005 appealing from the Office action mailed 17 May 2005.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,540,371	Gilliland	7-1996
6,427,894	Blank	9-2002

Applicant's disclosure of Prior art, Application No. 10/800929, (Oct. 15, 2004), pp. 1-5, Figure 5.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilliland (US 5,540,371) in view of the Applicant's disclosure page 1 line 15 to page 3 line 29 and Figure 5.

Gilliland discloses a wire feeding mechanism for advancing a continuous length of wire 11 along a pathway, comprising:

a housing having two roller supports each rotatable about a winding axis transverse to the wire pathway (see Figure 1), the roller supports on opposite sides of the pathway and drivably engaged 30 with each other

a drive roller 32A, 32B on each of the roller supports for rotation therewith, the drive roller including an outer surface 32 extending circumferentially about the corresponding axis that defines a groove 35 having an included angle (Fig. 3B, col.6, lines 48-59), the drive roller compressively contacting a continuous length of wire such that the wire is advanced along the pathway in response to rotation of the drive rollers 32A, 32B.

Gilliland fails to teach a pair of intersecting walls defining the groove having an included angle between at least 30 degrees and less than 90 degrees.

The applicants disclosed prior art teaches a housing having two roller supports each rotatable about a corresponding axis transverse to a wire pathway, the roller supports being on opposite sides of a pathway and being driveably engaged with each other (page 1 lines 15+), and a drive roller (Fig. 5) including an outer surface extending circumferentially about the corresponding axis that defines a groove 126, 128 having an included angle between a pair of intersecting walls defining the groove at least 30 degrees and less than 90 degrees (30-60 degrees) (Figure 5 and page 3, lines 13-22).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the feeding mechanism of Gilliland to include an included angle of at least 30 degrees and less than 90 degrees (30-60 degrees) as suggested by the disclosed prior art of Figure 5 (page 3, lines 13-22), to decrease the compressive forces of the wire, and to provide more contact with the wire to reduce slippage while reducing the amount of pressure to grip the wire (Gilliland, col. 6, lines 56-59).

In regards to claim 4, Gilliland as modified by the Applicant's disclosure page 1 line 15 to page 3 line 29 and Figure 5, teaches the centerline of the wire 11 is above the outer surface of the drive roller 32A, 32B, (Gilliland, Fig. 3B, col.6, lines 48-59).

In regards to claims 6 and 14, Gilliland as modified by the Applicant's disclosure page 1 line 15 to page 3 line 29 and Figure 5, teaches a wire feeding mechanism for advancing a continuous length of wire 11 along a pathway, comprising:

a housing¹⁴ having two roller supports each rotatable about an axis transverse to a wire pathway, the roller supports being on corresponding opposite sides of the pathway and being driveably engaged with each other;

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a first drive roller 32A (Gilliland, Figure 3B) concentrically disposed with one of the two roller supports for rotation therewith, the first drive roller including a first drive roller groove 35 extending circumferentially therearound and having a first drive roller included angle (Fig. 3B, col.6, lines 48-59, Gilliland) the angle of 30-60 degrees (Applicant's disclosure Figure 5 and page 3, lines 13-22);

a second drive roller 32B concentrically disposed with the other of the two roller supports for rotation therewith, the second drive roller including a second drive roller groove 35 extending circumferentially therearound and having a second drive roller included angle of less than ninety degrees; and

the first and second drive rollers 32A, 32B positioned relative to one another such that a continuous length of wire received in the circumferential grooves between the first and second drive rollers is advanced along the passageway in response to rotation of said first and second drive rollers.

In regards to claim 8 and 18, Gilliland as modified by the Applicant's disclosure page 1 line 15 to page 3 line 29 and Figure 5, teaches the centerline of the wire 11 is above the outer surface of the drive roller 32A, 32B, (Gilliland, Fig. 3B, col.6, lines 48-59).

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilliland in view the Applicant's disclosure page 1 line 15 to page 3 line 29 and Figure 5, as applied to claims 1-10 and 14-20 above and in further view of Blank et al. (US 6,427,894).

Blank teaches a wire feeding mechanism having a first 26, 37 and second 27, 38 set of drive rollers, each having a second drive roller groove (Fig. 3) extending circumferentially

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therearound and spaced from a first drive roller groove, and where one of the first and second drive rollers is radially adjustable.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the wire feeder of Gilliland as modified by the Applicant's disclosure page 1 line 15 to page 3 line 29 and Figure 5 to include a second set of drive rollers as suggested by Blank, to increase the driving force on the wire.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the rollers of Gilliland as modified by the Applicant's disclosure page 1 line 15 to page 3 line 29 and Figure 5 to include a second groove as suggested by Blank, to provide extended life to the roller after the first groove is worn.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the drive rollers of Gilliland as modified by the Applicant's disclosure page 1 line 15 to page 3 line 29 and Figure 5 to include a radially adjustment as suggested by Blank, to control the compressive force of the wire exerted by the roller (Blank, col. 2, lines 4-16).

(10) Response to Argument

A. Independent Claim 1 and dependant claims 2-3 and 5 are *not* in Condition for Allowance

1. Claim 1 is rejected being unpatentable over Gilliland in view of the Applicant's disclosure page 1 line 15 to page 3 line 29 and Figure 5, as discussed above.

a. Intersecting Walls Defining a Groove are recited in Claim 1 and taught by the references of record

(i) Features of Intersecting Walls recited in claim 1.

The claimed feature of “a pair of intersecting walls defining a groove” are recited in claim 1 as amended to the claims on 18 April 2005.

- (ii) Intersecting Walls defining a groove are taught by the references of record.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The appellant attempts to argue that the base reference Gilliland fails to disclose intersecting walls defining a groove, but the examiner has admitted that Gilliland fails to teach this feature (see rejection above). The appellant then argues that the disclosed prior art of Figure 5 defines a roller having a groove between thirty and sixty degrees, and a second roller having a flat surface. The Examiner would like to note that the appellant has not challenged that the disclosed prior art of Figure 5 fails to teach a pair of intersecting walls defining a groove. There is no claimed limitation to preclude a curvature defining the intersecting walls. Appellant then argues that adding the roller arrangement of Figure 5 would remove the groove 35 of Gilliland entirely. This combination would destroy the base reference of Gilliland and is not suggested by the Examiner. Gilliland discloses two rollers defining a groove having an included angle, the disclosed prior art of Figure 5 is relied on to teach the included angle to be about 30 degrees or greater and less than ninety degrees.

In response to appellant's argument that Gilliland in view of Figure 5 of the applicant's disclosure fails to teach a intersecting wall defining a groove and the combination would fail, the test for obviousness is not whether the features of a secondary reference may be bodily

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incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test for obviousness is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom (see *In re Preda*, 401 F.2d 825, 159 USPQ 342 (CCPA 1968)) and skill, rather than the converse is presumed on the part of those of ordinary skill in the art (see *In re Sovish*, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985)).

The appellant suggests that one having ordinary skill in the art would combine Gilliland and Figure 5 of the applicant's disclosure so that the drive rollers would fail to advance the wire, which is the exact opposite of the intended use of both references. One having ordinary skill in the art would recognize modifications that would inherently have to be made when applying the teachings of Figure 5 of the applicant's disclosure to Gilliland. Gilliland discloses two rollers defining a groove having an included angle from compressively contacting and advancing wire, the disclosed prior art of Figure 5 is relied on to teach the included angle to be about 30 degrees or greater and less than ninety degrees.

- b. Combination of Gilliland and Applicant's Figure 5 is Proper
 - (i) Ample motivation to combine references

The appellant makes an erroneous statement that the examiner asserts that there is no requirement that a motivation to make a modification be expressly articulated. The examiner was relying on previously established case law. The test for combining references is what the

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combination of the disclosure taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). The Examiner recognizes that the references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). As long as some motivation or suggestion to combine is or suggestion to combine the references is provided by the prior art taken as a whole, the law does not require that the references be combined for the reasons contemplated by the inventor. (see *In ree Beattie*, 974 F.2d 1309, 24 USPQ 1040 (Fed. Cir. 1992)). The fact that that appellants have recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be that basis for patentability when the differences would otherwise have been obvious (see *Ex parte Obiaya*, 227 USPQ 58 (BPAI 1985). Aff'd mem., 795 F.2d 1017 (Fed. Cir. 1986)).

In this case, Gilliland clearly discloses a pair of drive rollers in Figure 3A wherein a first drive roller has a groove 34 and that second drive roller is relatively flat, and discloses a pair of drive rollers in Figure 3B each having a groove 34, 35. Gilliland goes on to say that the use of two grooves provides more contact with the wire than a single groove and minimizes the rollers slipping of the wire while using the least amount of pressure to grip the wire (col. 6, lines 56-60). Therefore, Gilliland discloses the advantages of using two grooves as opposed to one, while the Applicant's disclosure page 3 lines 13-29 and Figure 5 teaches using an angle of 30-60 degrees better grip the wire and further "lessen the amount a wire deformed", and that "reductions in the required compressive force are generally considered desirable and can decrease wear on the wire

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feed mechanism and/or reduce slippage of the wire relative to the drive rollers.” This provides evidence that the combination of Gilliland and Applicant’s Figure 5 is proper.

- (ii) Teachings of Gilliland and Applicant’s Figure 5 are congruent

In evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom (see *In re Preda*, 401 F.2d 825, 159 USPQ 342 (CCPA 1968)) and skill, rather than the converse is presumed on the part of those of ordinary skill in the art (see *In re Sovish*, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985)). The appellant contends that modifying the rollers 32A, 32B of Gilliland with the teaching of a groove having an included angle greater than 30 degrees but less than ninety degrees as taught by the applicant’s Figure 5 would create an inoperable arrangement. The appellant fails to recognize that Gilliland discloses the grooves with an inward taper of four degrees on each wall (col. 6, lines 52-53) and that modifying that angle to be greater than 30 degrees but less than ninety degrees as taught by the applicant’s Figure 5 would create a more acute angle than that which is disclosed by Gilliland. One skilled in the art would reasonably be expected to combine the two teachings. Gilliland’s desired configuration is for the centerline of the wire to be between the surfaces of the rollers (col. 6, lines 55-56). Modifying Gilliland in the way suggested by the appellant would destroy its desired configuration. Gilliland discloses two rollers defining a groove having an included angle where the centerline of the wire to be between the surfaces of the rollers, the disclosed prior art of Figure 5 is relied on to teach the included angle to be about 30 degrees or greater and less than ninety degrees.

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c. Dependant Claims 2-3 and 5 stand or fall together with claim 1

B. Dependant Claim 4 is *not* in condition for allowance

1. As noted above in response A(b)(ii), Gilliland's desired configuration is for the centerline of the wire to be between the surfaces of the rollers (col. 6, lines 55-56). The appellant fails to recognize that Gilliland discloses the grooves with an inward tape of four degrees on each wall (col. 6, lines 52-53) and that modifying that angle to be greater than 30 degrees but less than ninety degrees as taught by the applicant's Figure 5 would create a more acute angle than that which is disclosed by Gilliland. One skilled in the art would reasonably be expected to combine the two teachings. Gilliland discloses two rollers defining a groove having an included angle where the centerline of the wire to be between the surfaces of the rollers, the disclosed prior art of Figure 5 is relied on to teach the included angle to be about 30 degrees or greater and less than ninety degrees.

C. Independent Claim 6 and dependant claims 7 and 10-13 are *not* in Condition for Allowance

1. Claim 6 is rejected being unpatentable over Gilliland in view of the Applicant's disclosure page 1 line 15 to page 3 line 29 and Figure 5, as discussed above.

a. Claim 6 is taught by Gilliland as modified by Applicant's disclosed Figure 5

In response to appellant's argument that Gilliland in view of Figure 5 of the applicant's disclosure fails to disclose or fairly suggest the wire feeding mechanism of claim 6, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly

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suggested in any one or all of the references. Rather, the test for obviousness is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom (see *In re Preda*, 401 F.2d 825, 159 USPQ 342 (CCPA 1968)) and skill, rather than the converse is presumed on the part of those of ordinary skill in the art (see *In re Sovish*, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985)).

The appellant suggests that one having ordinary skill in the art would combine Gilliland and Figure 5 of the applicant's disclosure so that the drive rollers would fail to advance the wire, which is the exact opposite of the intended use of both references. One having ordinary skill in the art would recognize modifications that would inherently have to be made when applying the teachings of Figure 5 of the applicant's disclosure to Gilliland. Gilliland's desired configuration is for the centerline of the wire to be between the surfaces of the rollers (col. 6, lines 55-56). Modifying Gilliland in the way suggested by the appellant would destroy its desired configuration. Gilliland discloses two rollers defining a groove having an included angle where the centerline of the wire to be between the surfaces of the rollers, the disclosed prior art of Figure 5 is relied on to teach the included angle to be about 30 degrees or greater and less than ninety degrees.

b. Combination of Gilliland and Applicant's Figure 5 is Proper

The appellant makes an erroneous statement that the examiner asserts that there is no requirement that a motivation to make a modification be expressly articulated. The examiner was relying on previously established case law. The test for combining references is what the combination of the disclosure taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). The Examiner recognizes that the references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In this case, Gilliland clearly discloses a pair of drive rollers in Figure 3A wherein a first drive roller has a groove 34 and that second drive roller is relatively flat, and discloses a pair of drive rollers in Figure 3B each having a groove 34, 35. Gilliland goes on to say that the use of two grooves provides more contact with the wire than a single groove and minimizes the rollers slipping of the wire while using the least amount of pressure to grip the wire (col. 6, lines 56-60). Therefore, Gilliland discloses the advantages of using two grooves as opposed to one, while the Applicant's disclosure page 3 lines 13-29 and Figure 5 teaches using an angle of 30-60 degrees better grip the wire and further "lessen the amount a wire deformed", and that "reductions in the required compressive force are generally considered desirable and can decrease wear on the wire feed mechanism and/or reduce slippage of the wire relative to the drive rollers." This provides evidence that the combination of Gilliland and Applicant's Figure 5 is proper.

2. Dependant claims 7 and 10-13 Stand or Fall together with Claim 6.

D. Dependant Claims 8 and 9 are *not* in condition for allowance

1. As noted above in response B(1), Gilliland's desired configuration is for the centerline of the wire to be between the surfaces of the rollers (col. 6, lines 55-56). The appellant fails to recognize that Gilliland discloses the grooves with an inward tape of four degrees on each wall (col. 6, lines 52-53) and that modifying that angle to be greater than 30 degrees but less than ninety degrees as taught by the applicant's Figure 5 would create a more acute angle than that which is disclosed by Gilliland. One skilled in the art would reasonably be expected to combine the two teachings. Gilliland discloses two rollers defining a groove having an included angle where the centerline of the wire to be between the surfaces of the rollers, the disclosed prior art of Figure 5 is relied on to teach the included angle to be about 30 degrees or greater and less than ninety degrees.

E. Independent Claim 14 and dependant claims 15-17 are *not* in Condition for Allowance

1. Claim 14 is rejected being unpatentable over Gilliland in view of the Applicant's disclosure page 1 line 15 to page 3 line 29 and Figure 5, as discussed above.
 - a. Claim 14 is taught by Gilliland as modified by Applicant's disclosed Figure 5

In response to appellant's argument that Gilliland in view of Figure 5 of the applicant's disclosure fails to disclose or fairly suggest the wire feeding mechanism of claim 6, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test for obviousness is what the

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combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom (see *In re Preda*, 401 F.2d 825, 159 USPQ 342 (CCPA 1968)) and skill, rather than the converse is presumed on the part of those of ordinary skill in the art (see *In re Sovish*, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985)).

The appellant suggests that one having ordinary skill in the art would combine Gilliland and Figure 5 of the applicant's disclosure so that the drive rollers would fail to advance the wire, which is the exact opposite of the intended use of both references. One having ordinary skill in the art would recognize modifications that would inherently have to be made when applying the teachings of Figure 5 of the applicant's disclosure to Gilliland. Gilliland's desired configuration is for the centerline of the wire to be between the surfaces of the rollers (col. 6, lines 55-56). Modifying Gilliland in the way suggested by the appellant would destroy its desired configuration. Gilliland discloses two rollers defining a groove having an included angle where the centerline of the wire to be between the surfaces of the rollers, the disclosed prior art of Figure 5 is relied on to teach the included angle to be about 30 degrees or greater and less than ninety degrees.

b. Combination of Gilliland and Applicant's Figure 5 is Proper

The appellant makes an erroneous statement that the examiner asserts that there is no requirement that a motivation to make a modification be expressly articulated. The examiner

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was relying on previously established case law. The test for combining references is what the combination of the disclosure taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). The Examiner recognizes that the references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In this case, Gilliland clearly discloses a pair of drive rollers in Figure 3A wherein a first drive roller has a groove 34 and that second drive roller is relatively flat, and discloses a pair of drive rollers in Figure 3B each having a groove 34, 35. Gilliland goes on to say that the use of two grooves provides more contact with the wire than a single groove and minimizes the rollers slipping of the wire while using the least amount of pressure to grip the wire (col. 6, lines 56-60). Therefore, Gilliland discloses the advantages of using two grooves as opposed to one, while the Applicant's disclosure page 3 lines 13-29 and Figure 5 teaches using an angle of 30-60 degrees better grip the wire and further "lessen the amount a wire deformed", and that "reductions in the required compressive force are generally considered desirable and can decrease wear on the wire feed mechanism and/or reduce slippage of the wire relative to the drive rollers." This provides evidence that the combination of Gilliland and Applicant's Figure 5 is proper.

2. Dependant claims 15-17 Stand or Fall together with Claim 14.

F. Dependant Claims 8 and 9 are *not* in condition for allowance

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1. As noted above in response B(1), D(1), Gilliland's desired configuration is for the centerline of the wire to be between the surfaces of the rollers (col. 6, lines 55-56). The appellant fails to recognize that Gilliland discloses the grooves with an inward tape of four degrees on each wall (col. 6, lines 52-53) and that modifying that angle to be greater than 30 degrees but less than ninety degrees as taught by the applicant's Figure 5 would create a more acute angle than that which is disclosed by Gilliland. One skilled in the art would reasonably be expected to combine the two teachings. Gilliland discloses two rollers defining a groove having an included angle where the centerline of the wire to be between the surfaces of the rollers, the disclosed prior art of Figure 5 is relied on to teach the included angle to be about 30 degrees or greater and less than ninety degrees.

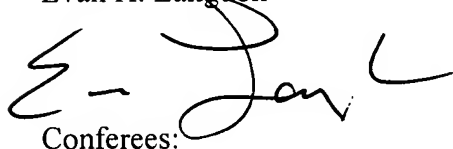
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Evan H. Langdon


Conferees:

Kathy Matecki 

William Rivera 



KATHY MATECKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600